

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MASSACHUSETTS

WILLIAM M. TYREE  
P.O. BOX-100  
SOUTH WALPOLE, MA. 02071  
PLAINTIFF, Pro se

V.

UNITED STATES ARMY  
CID AGENT PAUL MASON (Retired)  
CID AGENT JOSEPH BURZENSKI (Retired)  
DEFENDANTS  
U.S. Department of Justice  
John J. Moakley Courthouse  
1 Courthouse Way, Suite 9200  
Boston, Massachusetts 02210  
(Main phone: 617-748-3100)  
Counsel for Defendants

C.A. 04-11430-RCL

MOTION OF NOTICE OF APPEAL  
OF JUDGMENT DISMISSING THIS  
ACTION DATED OCTOBER 26, 2005,  
FROM LINDSAY, J., U.S.D.C.

Comes now the Plaintiff, William M. Tyree, Pro se, who moves this United States District Court, (USDC), Lindsay, J., to acknowledge this Notice of Appeal and order the record be assembled for the 1st Circuit Court of Appeals. This Appeal will be taken on the following information:

Parties to appeal: Plaintiff William M. Tyree; Defendant(s) U.S. Army, Joseph Burzenski, and Paul Mason;

Order to be appealed: Order of Lindsay, J., dismissing the above action for alleged lack of service on the Defendants;

Appeal to be taken on the record: there are no transcripts available as none were created. This appeal is taken on the pleadings on file in the docket of the above case: in specific Plaintiffs Motion With Affidavit & Exhibits In Opposition To The Defendants Motion To Dismiss The Amended Complaint Due To Lack

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Of Service Rule 12(b)(5) Motion Of April 11, 2005; 1/

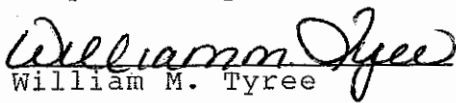
Questions taken on appeal:

1. Whether or not the USDC, Lindsay, J., erred in dismissing the above action for failure to make service on the Defendant(s)? 2/
2. Whether or not the premeditated and deliberate interference with the service on the Defendants by the Dept. of Correction at the direction of the United States Attorney constitute a waiver to the defense of failure to make service Rule 12(b)(5) on the Defendant(s)? 3/
3. Whether or not the action by the United States Attorney of directing the Dept. of Correction to threaten, intimidate, and coerce Plaintiff William m. Tyree, from serving the Defendant(s) and litigating the above case constitutes a violation of 42 USC, §1983 or 28 USC, §2671 Et Seq?

This information constitutes the matter taken on appeal from the Order of Lindsay, J., USDC, dated October 26, 2005.

Respectfully submitted,

October 28, 2005

  
William M. Tyree  
Pro se  
P.O. Box-100  
S. Walpole, MA. 02071

1/ Counsel for the Defendants will be the U.S. Attorney, and AUSA Michael P. Sady. Counsel for the Plaintiff is the Plaintiff, Pro se.

2/ Plaintiff served the Defendant(s) 8 times by certified U.S. Mail; then served all three Defendant(s) through the U.S. Marshall: service was made a total of not less than 11 times. Information was known to the USDC, Lindsay, J. AUSA Sady filed two motions for enlargement of time which was granted and after nine months AUSA Sady then filed a Rule 12(b)(5) Motion.

3/ See attached Dept. of Correction Grievance No. 9786 in which Sergeant, now Lieutenant Pat Mullvey admitted that a representative from the Office of the U.S. Attorney contacted him and directed Lt. Mullvey to threaten, intimidate, and coerce the Plaintiff (Tyree) into not having contact of any type with the Defendant(s) including service and litigation of the above action.